

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

VICKI ANN RAYBURN,

Plaintiff,

vs.

WADY INDUSTRIES, INC.

Defendant.

No. C07-1008

FINAL JURY INSTRUCTIONS

FINAL INSTRUCTION NO. 1

Members of the jury, the instructions I gave at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

Neither in these instructions nor in any ruling, action or remark that I have made during the course of this trial have I intended to give any opinion or suggestion as to what your verdict should be.

FINAL INSTRUCTION NO. 2

The fact that Wady Industries is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

FINAL INSTRUCTION NO. 3

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider a witness' intelligence, the opportunity a witness had to see or hear the things testified about, a witness' memory, any motives a witness may have for testifying a certain way, the manner of a witness while testifying, whether a witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

FINAL INSTRUCTION NO. 4

In these instructions you are told that your verdict depends on whether you find certain facts have been proved. The burden of proving a fact is upon the party whose claims rely upon that fact. The party who has the burden of proving a fact must prove it by the greater weight or preponderance of the evidence. To prove something by the greater weight or preponderance of the evidence is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, the evidence is equally balanced, you cannot find that issue has been proved.

In some instances, you will be instructed that a fact must be proven by “clear, convincing, and satisfactory” evidence. Evidence is clear, convincing, and satisfactory if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

The greater weight or preponderance of the evidence, or whether a fact has been proven by clear and convincing evidence, is not necessarily determined by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” That is a stricter standard which applies in criminal cases. It does not apply in civil cases such as this. You should, therefore, put it out of your minds.

FINAL INSTRUCTION NO. 5

Regarding her claim of retaliation, Rayburn must prove all of the following propositions:

1. Rayburn reasonably believed that she was being subjected to a hostile work environment and harassed on the basis of sex or gender;
2. Rayburn complained to Wady Industries that she was being subjected to a hostile work environment and harassed on the basis of sex or gender;
3. Wady Industries discharged Rayburn; and
4. Rayburn's complaint of a hostile work environment and harassment based on sex or gender was a motivating factor in Wady Industries' decision to discharge Rayburn.

If Rayburn has failed to prove any of these propositions, then Rayburn is not entitled to damages on this claim and you will consider her remaining claim. If Rayburn has proved all of these propositions, then Rayburn is entitled to damages in some amount.

FINAL INSTRUCTION NO. 6

Regarding element No. 1 of Instruction No. 5, in determining whether Rayburn reasonably believed she was being subjected to a hostile work environment and harassed on the basis of sex or gender, you must look at all the circumstances. The circumstances may include the frequency of the conduct complained of; its severity; whether it was physically threatening or humiliating, or merely offensive; whether it unreasonably interfered with Rayburn's work performance; and the effect on Rayburn's psychological well-being. No single factor is required in order to find a work environment hostile or abusive.

The conduct, no matter how boorish or vulgar, is only "based on sex or gender" if the conduct was motivated by Rayburn's gender. Conduct which can create a hostile environment may be, but need not be, explicitly sexual in nature.

Regarding element No. 4 of Instruction No. 5, the term "motivating factor" means a reason, alone or with other reasons, on which Wady Industries relied when it discharged Rayburn or which moved Wady Industries toward its decision to discharge Rayburn.

FINAL INSTRUCTION NO. 7

Regarding her claim of wrongful discharge in violation of public policy, Rayburn must prove all of the following propositions:

1. Rayburn was an employee of Wady Industries.
2. Wady Industries discharged Rayburn from employment.
3. Rayburn's report of the no-contact order violation was the determining factor in Wady Industries' decision to discharge Rayburn.
4. The discharge was a proximate cause of damage to Rayburn.
5. The nature and extent of damage.

If Rayburn has failed to prove any of these propositions, then Rayburn is not entitled to damages on this claim. If Rayburn has proved all of these propositions, then Rayburn is entitled to recover damages in some amount.

FINAL INSTRUCTION NO. 8

Regarding element No. 3 of Instruction No. 7, a determinating factor need not be the main reason behind the decision. It need only be the reason which tips the scales decisively one way or the other.

Regarding element No. 4 of Instruction No. 7, the conduct of a party is a proximate cause of damages when it is a substantial factor in producing damage and when the damage would not have happened except for the conduct. “Substantial” means the party’s conduct has such an effect in producing damage as to lead a reasonable person to regard it as a cause. A particular result may have more than one proximate cause.

FINAL INSTRUCTION NO. 9

If you find that Rayburn is entitled to damages on a particular claim, then you must award her such sum as you find will fairly and justly compensate her for any damages that you find were proximately caused to her by the wrongful conduct of Wady Industries at issue in that claim.

Rayburn's claim for compensatory damages includes two distinct types of damages: lost past earnings and emotional distress damages. You must consider each of these kinds of damages separately.

In considering Rayburn's lost past earnings, you must determine the amount of any wages and fringe benefits Rayburn would have earned in her employment with Wady Industries if she had not been discharged on July 10, 2006, to November 23, 2007, *minus* the amount of earnings and benefits that Rayburn received from other employment during that time. You may award lost past earnings if Rayburn prevails on either of her claims, but Rayburn can recover only one award of lost past earnings, even if she prevails on both of her claims.

In considering emotional distress damages, you must determine the amount of damages that will reasonably compensate Rayburn for the emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life that were proximately caused by Wady Industries' wrongful conduct at issue in each of Rayburn's claims. The amount, if any, that you assess for damages for emotional distress cannot be measured by an exact or mathematical standard, and Rayburn is not required to introduce evidence of monetary value of such damages. However, you must use your sound judgment, based upon impartial consideration of the evidence, to determine the amount of such damages. You may award emotional distress damages if Rayburn prevails on either of her claims, but Rayburn can recover only one award of emotional distress damages, even if she prevails on both of her claims.

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INSTRUCTION NUMBER 9 (Cont'd)

Remember, throughout your deliberations, you must not engage in any speculation, guess or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy.

FINAL INSTRUCTION NO. 10

In addition to compensatory damages, Rayburn also claims entitlement to “punitive damages.” You may, but are not required to, award punitive damages on any claim on which Rayburn has prevailed.

Retaliation. If you find in favor of Rayburn on her claim of retaliation, then you must determine whether Wady Industries acted with malice or reckless indifference to Rayburn’s right not to be retaliated against for complaining of harassment or a hostile work environment based on sex or gender. Wady Industries acted with malice or reckless indifference if it has been proved that Wady Industries (1) knew that the conduct to which Rayburn was subjected was in violation of the law prohibiting a hostile work environment or retaliation for opposing a hostile work environment based on sex or gender; or (2) acted with reckless disregard of that law. However, you may not award punitive damages if it has been proved that Wady Industries made a good-faith effort to comply with the law prohibiting the wrongful conduct at issue in the claim.

If you find that Rayburn has proven by a preponderance of clear, convincing, and satisfactory evidence that Wady Industries acted with malice or reckless indifference and did not make a good-faith effort to comply with the law, then, in addition to any other damages to which you find Rayburn is entitled, you may, but are not required to, award Rayburn an additional amount as punitive damages.

Wrongful discharge in violation of public policy. If you find in favor of Rayburn on her claim of wrongful discharge in violation of public policy, then you must determine whether Rayburn has proven by a preponderance of clear, convincing, and satisfactory evidence that Wady Industries’ conduct constituted willful and wanton disregard for the rights of another and caused actual damage to Rayburn.

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INSTRUCTION NUMBER 10 (Cont'd)

Conduct is willful and wanton when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

Factors you may consider. Punitive damages are not intended to compensate for loss but are allowed to punish and discourage Wady Industries and others from like conduct in the future. You may award punitive damages only if Wady Industries' conduct warrants a penalty in addition to the amount you award to compensate for Rayburn's actual losses.

There is no exact rule to determine the amount of punitive damages, if any, you should award. You may consider the following factors:

1. The nature of Wady Industries' conduct that harmed Rayburn.
2. The amount of punitive damages which will punish and discourage like conduct by Wady Industries. You may consider Wady Industries' financial condition or ability to pay. You may not, however, award punitive damages solely because of Wady Industries' financial condition or ability to pay.
3. Rayburn's actual damages. The amount awarded for punitive damages must be reasonably related to the amount of actual damages you award to Rayburn.
4. The existence and frequency of prior similar conduct.

FINAL INSTRUCTION NO. 11

If you find in favor of Rayburn on one or more of her claims, but you find that her damages proximately caused by the wrongful conduct at issue on that claim have no monetary value, then you must return a verdict on that claim for Rayburn in the nominal amount of One Dollar (\$1.00).

FINAL INSTRUCTION NO. 12

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges - judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone - including me - how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be - that is entirely for you to decide.

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INSTRUCTION NUMBER 12 (Cont'd)

Finally, the verdict form is simply the written notice of the decision that you reach in this case. You will take this form to the jury room, and when each of you has agreed on the verdict, your foreperson will fill in the form, sign and date it, and advise the marshal or bailiff that you are ready to return to the courtroom.

DATED this _____ day of August, 2008.

JON STUART SCOLES
United States Magistrate Judge
NORTHERN DISTRICT OF IOWA